IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

S.B. CIVIL WRIT PETITION NO.6580/2003- PRATAP SINGH VS. STATE OF RAJASTHAN & ORS. UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 15th December, 2006

PRESENT

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.P.R. Singh, Advocate, for the petitioner.
Mr.R.Dave, Dy. Government Advocate for the respondent.

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BY THE COURT:

The petitioner in this writ petition has challenged the order dated 10.12.1999 whereby penalty of stoppage of one grade increment without cumulative effect was imposed upon him and the order dated 22.8.2000 whereby his appeal against that order was rejected and further the order dated 5.2.2002 whereby his review petition was rejected.

The order of penalty dated 10.12.1999 is a detailed order. According to this order, the respondents vide notification dated 11.8.1997 invited applications for appointment on the post of constable/constable driver and received 1953 and 55 applications for such appointment. Similarly,the respondents received 2008 applications upto 24.11.1997 for appointment for the year 1978-79. Each of the applications enclosed with postal order of Rs.25/-. In the same manner, 6652 applications were received during the year 1998-99 upto 30.11.1998 with which also postal orders each of Rs.25/- was received. While the demand drafts of Rs. 1,66,300/- was received for the year 1998-99,the combined amount of postal orders for the year 1997-98 and 1999-2000 was Rs.2,16,500/-. These figures only pertains to application forms received for the category of Scheduled Caste for which the petitioner was made incharge to receive the applications, scrutinized them and to deposit the postal orders with the treasury. The petitioner having not deposited the postal orders was charged of committing a misconduct. On consideration of his reply and the other material on record, the disciplinary

authority vide order dated 10.12.1999 imposed penalty of stoppage of one grade increment without cumulative effect which order was confirmed by the appellate authority and in review petition also.

I have heard learned counsel Shri P.R. Mehta, for the petitioner and Shri R.Dave, learned Dy. Government Advocate and perused the record.

Shri P.R. Mehta, learned counsel for the petitioner argued that petitioner was assigned only work of taking the application form in respect of post of constable of the candidates belonging to Scheduled Tribe, but he was never assigned the work of encashment of postal orders or deposit of them with the post office or deposit the amount received therefrom in the post office. It was one Shri Poonam Singh who was responsible for realization of the amount of postal orders. Shri Poonam Singh was also served with the charge-sheet under Rule 17 of the CCA Rules for the same charges and he was punished with stoppage of two grade increments without

cumulative effect. He filed review petition before his Excellency the Governor of Rajasthan who after consideration of the material available on record partly allowed the review petition and instead of penalty of stoppage of two grade increment without cumulative effect passed the order of censure on 23.10.2001 against him. It was argued that Poonam Chand being the incharge of section was responsible for encashment of postal orders and depositing the amount thereof with the treasury. Shri Poonam Chand in order to make up the loss caused to the government deposited a sum of Rs.6627/- by way of additional amount of commission. The respondents have shown a lenient view in his matter and altered the penalty. There was no reason why similar treatment was not accorded to the petitioner particularly when he was only responsible for scrutiny of the application forms.

On the other hand Shri Rameshwar Dave, learned Dy. Government Advocate argued that petitioner being member of the team was equally responsible of the scrutiny of the application forms and deposit of the postal orders and encash

the same and deposit the money received therefrom with the treasury. The petitioner was also responsible alongwith his senior therefore, he cannot escape his responsibility.

I have considered the arguments as advanced by learned counsel for the parties and perused the record.

While it remains a fact that petitioner was only responsible for scrutiny of the application forms of the candidates belonging to ST, he has been held responsible for not only segregating the postal orders received with each application but also encash them. But according to respondents it was a joint responsibility of petitioner and other members of team especially its incharge Shri Poonam Chand. The respondents in their reply however have been forthwith in admitting in para no.5 that Poonamchand and petitioner were responsible for deposit of the same alongwith a senior clerk. Annex.8 is the order by which the appeal of Poonamchand was allowed by the appellate authority. In the case of the petitioner, however the appellate authority on a mere hyper

technical ground rejected the appeal having been filed three months delayed. Originally the penalty of stoppage of one grade increment without cumulative effect was imposed upon the petitioner as against the penalty of stoppage of two grade increment without cumulative effect imposed upon Poonamchand. However, he deposited the amount of loss of additional commission with the treasury, therefore, the reviewing authority has altered the penalty of stoppage of two grade increments without cumulative effect into that of only censure. When Poonamchand who had been adjudged more responsible and awarded greater penalty than the petitioner has been shown lienency of being subjected to lesser penalty of mere censure, there is no reason why the petitioner who was originally awarded only lesser penalty of stoppage of one grade increment without cumulative effect be not awarded the similar treatment. The rejection of his appeal by the appellate authority on account of delay cannot be appreciated and at the same time, while the petitioner cannot be allowed to go scot free for the lapses but it cannot be ignored that it was a team work where he was one of the members of the team

responsible for scrutiny of the forms. Evidence that has come on record show that he alone was not responsible for the scrutiny of the forms and encashment of the postal orders and deposit of the money received therefrom with the treasury. On the contrary, the order passed in the case of Poonamchand indicate that apart from Poonamchand there were other three members of the team, Poonamchand being incharge of the team. It would therefore be appropriate that at least same penalty which was awarded Poonamchand should also be awarded to the petitioner.

In the ordinary course, this court in exercise of writ jurisdiction under Article 226 /227 of the Constitution of India does not interfere in the quantum of penalty but where an apparent dis-similarity in the approach of the disciplinary/appellate/reviewing authority is reflected which may have effect of causing mis-carriage of justice, powers of judicial review are required to be exercised in order to do complete justice so as to bring about the equality amongst the delinquent where the gravity of the charges are not dis-similar

in disciplinary matters on the question of penalty.

In my considered, view it is one of those rare cases where this Court should not decline to make an interference to the extent of bringing about an equilibrium between the petitioner and Poonamchand who are not only similarly situated but rather case of the petitioner stands on better footing than that of Poonamchand.

For the reasons enumerated above, the writ petition is partly allowed and impugned orders of penalty against the p i.e., the penalty of stoppage of one grade increment without cumulative effect is modified into that of penalty of censure.

There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-